



UNITED STATES PATENT & TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR
INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

MAILED

OCT 16 2002

**DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600**

Ostrolenk Faber Gerb & Soffen
1180 Avenue of the Americas
New York, NY 10036-8403

In re Application of
Deborah Everling et al
Application No. 09/204,390
Filed: December 2, 1998
For: **MERCHANT TRANSACTION
DATA MINING METHOD**

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:
: **DECISION ON PETITION**
: **TO WITHDRAW THE**
: **HOLDING OF ABANDONMENT**

This is in reply to applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office on April 5, 2002.

The records of the Office indicate that an Office action was mailed to the address of record (1180 Avenue of the Americas, New York, NY) on June 11, 2001 wherein a three-month shortened statutory period for response was set. Since no response to the Office action was received, the application was held abandoned in the Notice of Abandonment mailed February 12, 2002.

Petitioner alleges that he never received the above-noted Office action and states that he searched of the patent application's file and did not locate the Office action of June 11, 2001. A printout of the file history for the instant application and a copy of a manual docket for the firm have been included with the petition.

There is a strong presumption that the correspondence, which was properly addressed and delivered to the United States Postal Service, was in fact delivered to the addressee. An allegation that the Notice was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. This presumption that the Notice was delivered to the applicant may be overcome by a showing that the Notice was not received. Applicant's statements should include a statement by him, and by anyone else at applicant's correspondence address, who would have handled the Office action, and any available documentary evidence of mail received, covering a reasonable period after the date of the Office action, to show non-receipt of the action in question.

Copies of records on which the receipt date of the Office action would have been entered had it been received, (e.g., a copy of the outside of the file maintained by applicant), are required if available. Also, a copy of the docket records or any equivalent system used by the applicant as a reminder to ensure a timely response is

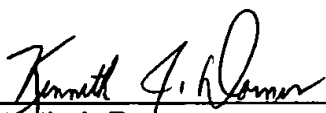
required. The manual docket submitted appears to list papers received for a given day at the firm. However, a docket record of all cases due at or around the due date of September 11, 2001 is required. Any submission must include an explanation of the system used and what any data thereon means.

Further, it is noted that the petition includes a statement that Mr. Scheer did not receive the June 11, 2001 Office action. However, according to the file record, Mr. Scheer is not listed as having Power of Attorney. It is also noted that the address under petitioner's signature is different than the address of record. Should an address change be desired, a notification of a change of address must be submitted, signed by an attorney of record. Finally, in view of these discrepancies, a statement that the Office action of June 11, 2001 was not received at the address of record (1180 Avenue of the Americas, New York, NY) by an attorney of record at that address is required.

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. No fee is required for such a petition.

The petition is **DISMISSED** pending submission of a renewed petition.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."



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Kjd: 10/10/02